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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

District of Columbia	)	Administrative Complaint,
Department of Corrections	)	Compliance Order and Notice of
Suite N-203	)	Opportunity for Hearing
1923 Vermont Avenue, N.W.	)	
Washington, DC 20001	)	U.S. EPA Docket Number
RESPONDENT	)	RCRA-III-281
	)	
Lorton Correctional Institute	)	Proceeding Under
Fairfax County	)	Section 3008(a) of the
Lorton, Virginia	)	Resource Conservation and
FACILITY	)	Recovery Act, as amended
	)	42 U.S.C. Section 6928(a)
	)	

## I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Section 3008(a)(1) and (g) of Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as "RCRA"), 42 U.S.C.

§ 6928(a)(1) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Complainant is the Director, Hazardous Site Cleanup Division, United States Environmental Protection Agency, Region III ("EPA") who, in addition to the Director, Waste and Chemicals Management Division, EPA, has signed the Complaint.

The District of Columbia, Department of Corrections (the "Respondent") is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Section 3008(a) of RCRA authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment

of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia ("Virginia") was granted final authorization to administer a state hazardous waste management program in lieu of the Federal hazardous waste management program established under Subtitle C of RCRA, 42 U.S.C. Sections 6921-6939(b). The provisions of the Virginia hazardous waste management program, through this final authorization, have become requirements of Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Virginia has not been granted authorization to administer its hazardous waste management program in lieu of certain provisions of the Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. These provisions are enforceable in Virginia exclusively by EPA.

To the extent that factual allegations or legal conclusions in this Complaint are based on provisions of Virginia's authorized hazardous waste management program, those provisions are cited as authority for such allegations and conclusions, and the analogous provisions of the federal hazardous waste management program under RCRA Subtitle C are cited thereafter. The factual allegations or legal conclusions based solely on provisions of the federal hazardous waste management program added or amended by HSWA, cite only those Federal provisions as authority for such allegations or conclusions.

EPA has given Virginia, through the Virginia Department of Environmental Quality ("VADEQ"), prior notice of the issuance of this Complaint in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. Section 6928(a)(2).

## II. COMPLAINT

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is the District of Columbia, Department of Corrections and is a "person" as defined in Sections 2.134 of the Virginia Hazardous Waste Management Regulations (herein after the "VHWMR") (40 C.F.R. § 260.10), RCRA Section 1004(15), 42 U.S.C. § 6903(15).
2. The Respondent operates the Lorton Correctional Institute facility located at 8515 Silverbrook Road, Lorton, Virginia (the "Facility").
3. On or about January 26, 1984, the Respondent submitted to EPA a Notification of Hazardous Waste Activity ("Notification") pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) for the Facility. The Notification stated that the Facility generated hazardous waste

bearing the code F002. F002 is a "hazardous waste" as defined in Sections 2.80 of the VHWMR (40 C.F.R. §§ 260.10 and 261.3). The Facility was assigned EPA I.D. No. VAD980830988.

4. On or about August 31, 1993, the Respondent submitted to EPA a revised Notification of Hazardous Waste Activity ("Revised Notification") pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) for the Facility. The Revised Notification stated that the Facility generated hazardous wastes which possess the characteristic of ignitability. Hazardous wastes bearing the codes F002, F003 and F005 were also identified as being handled at the Facility. Each of these wastes is a "hazardous waste" as defined in Sections 2.80 of the VHWMR (40 C.F.R. §§ 260.10 and 261.3).

5. An inspection of the Facility was conducted by representatives of the EPA, accompanied by representatives of the VADEQ on May 12, 13 and 14, 1998 ("EPA Inspection").

6. At the time of the EPA Inspection, EPA hand delivered to Raymond Sullivan, Assistant Director of the Industries Division at the Facility, a request for information letter ("Request Letter") pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). This letter requested that Respondent provide answers in response to the Request Letter by May 31, 1998.

7. Respondent failed to respond to EPA's Request Letter by May 31, 1998.

8. On June 16, 1998, EPA sent a follow-up letter to Respondent directing it to furnish the information sought by EPA in its Request letter within seven calendar days of Respondent's receipt of the letter.

9. EPA received Respondent's response to the Request Letter on July 6, 1998. Respondent's response letter was dated July 2, 1998.

#### COUNT 1

10. The allegations of paragraphs 1 through 9 are incorporated herein by reference.

11. VHWMR § 6.05.05(a) (40 C.F.R. § 262.34(a)) requires, in part, that a generator may accumulate hazardous waste on site for ninety (90) days or less without a permit or without having interim status provided that:

\* \* \*

The generator complies with the requirements of owners or operators in section 9.02.07, 9.03 and 9.04.

12. VHWMR § 9.02.07(a)(1) (40 C.F.R. § 265.16) provides in part that facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches

them to perform their duties in a way that ensures the facility's compliance with the requirements of Section 9.00 [Hazardous Waste Management Facility Interim Status Standards].

13. Mr. Theodore Streets, Vocational Instructor at the Auto Body Shop at the Facility, is responsible for the management of hazardous waste, including solvent based paint waste and lacquer thinner waste, and has not received hazardous waste management training.

15. VHWMR § 6.05.05(b) provides in part that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of sections 9.00 or 10.00 and 11.00.

16. At the time of the EPA Inspection two 55 gallon drums labeled as "hazardous waste" were stored at the old saw mill near the Occoquan facility at the Lorton Correctional Institute. The labels on both drums showed an accumulation start date of April 11, 1996.

17. The Respondent, at least since April 11, 1996 until the date of the EPA Inspection, did not have a RCRA permit or interim status.

18. Respondent failed to qualify for the exemption from the requirement to have a permit or interim status set forth in VHWMR § 6.05.05(a) (40 C.F.R. § 262.34) because it stored hazardous waste in drums for greater than ninety (90) days and did not provide training for Mr. Streets to teach him to perform his duties in a way that ensures the Facility's compliance with the requirements of the Hazardous Waste Management Facility Interim Status Standards.

19. Respondent violated VHWMR § 11.1 (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), 40 C.F.R. § 270.1(b)) by accumulating hazardous waste in containers at the Facility for more than nine (90) days without a permit and/or without interim status and by not providing training for Mr. Streets to teach him to perform his duties in a way that ensures the Facility's compliance with the requirements of the Hazardous Waste Management Facility Interim Status Standards.

#### COUNT 2

20. The allegations of paragraphs 1 through 19 are incorporated herein by reference.

21. VHWMR § 6.02 (40 C.F.R. § 262.11) provides that a person who generates a solid waste shall determine if that waste is a hazardous waste.

22. VHWMR § 2.181 provides in pertinent part that "solid waste" is a garbage, refuse, sludge and other discarded material, including solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities.

23. During the EPA Inspection, the following containers of solid waste were present at the

Old Maintenance Garage at the Facility:

- a. One drum of waste paint that Mr. Senior, the Shop Foreman at the Facility, agreed with the EPA inspectors had an odor of solvent;
  - b. One drum containing an unidentified liquid that Mr. Senior agreed with the EPA inspectors had an odor of solvent; and
  - c. Numerous drums containing a liquid that appeared to be a waste motor oil.
24. Numerous other drums of materials were present at the Facility during the EPA Inspection that appeared to be abandoned.
25. At the time of the EPA Inspection, the grit solvent separator (hereinafter the "ink pit") was filled with solid waste consisting of approximately six (6) to twelve (12) inches of scum, approximately two (2) to three (3) feet of liquid underneath the scum and approximately eighteen (18) feet of sludge beneath the liquid. The ink pit was constructed in or about 1940 and until approximately November of 1995 was used for the purpose of grit removal, sedimentation and/or oil/water separation for the wastewater coming from the industrial laundry operations prior to entering the Sewer Treatment Plant. The industrial laundry operation was used to launder rags containing ink from the Bureau of Printing and Engraving and the Government Printing Office. The approximate dimensions of the ink pit are 23 feet long, 10 feet wide and 22 feet deep with a funnel shaped bottom.
26. Respondent failed to determine pursuant to VHWMR § 6.02 (40 C.F.R. § 262.11) whether the solid wastes contained in drums and in the ink pit at the Facility are hazardous waste.
27. Respondent's failure to make a hazardous waste determination for the solid in the waste drums and the solid waste contained in the ink pit at the Facility constitutes a violation of VHWMR § 6.02 (40 C.F.R. § 262.11).

### III. COMPLIANCE ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to:

1. Within sixty (60) days following the effective date of this Compliance Order, submit to EPA for review, and to VADEQ for review and approval, a hazardous waste determination plan and a schedule for implementing such plan to address all solid waste at the Facility. Within ten (10) days of Respondent's receipt of VADEQ and EPA's comments on the hazardous waste determination plan, Respondent shall revise the hazardous waste determination plan in accordance with VADEQ and EPA's comments and provide a copy of the revised plan to VADEQ and EPA. Within ten (10) days of receiving VADEQ approval implement the hazardous waste determination plan in accordance with the schedule set forth therein.

Within thirty (30) days of determining that any of the solid wastes stored in drums or in the ink pit at the Facility are hazardous waste, Respondent shall, submit to EPA for review, and to VADEQ for review and approval, a closure plan and a schedule for implementing closure of the drum storage areas and/or the ink pit at the Facility in which hazardous wastes have been stored without a permit or without having interim status and without meeting at all times each of the conditions for generator accumulation set forth in VHWMR § 6.05.05(a) (40 C.F.R. § 262.34(a)). The closure plan and schedule shall be completed in accordance with the requirements of VHWMR § 9.07.03 (40 C.F.R. § 265.112). Immediately upon receiving approval of the closure plan from VADEQ, begin and thereafter complete closure of this area in accordance with the schedule set forth in the approved closure plan, and in accordance with VHWMR § 9.07.03 (40 C.F.R. Part 265, Subpart G).

2. At all times following the effective date of this Compliance Order, cease storing hazardous waste at the Facility except in accordance with a permit or interim status, and/or in accordance with VHWMR § 6.05.05 (40 C.F.R. § 262.34).
3. Within fourteen (14) days following the effective date of this Compliance Order, dispose, in accordance with RCRA, the two (2) hazardous waste 55 gallon drums located at the old saw mill.
4. Within fourteen (14) days following the effective date of this Compliance Order, provide hazardous waste management training in accordance with VHWMR § 9.02.07 to Mr. Theodore Streets.
5. Within ninety (90) calendar days of the effective date of this Compliance Order, submit a report to EPA which documents and certifies whether or not Respondent is in compliance with the terms of this Compliance Order.

Any notice, report, certification, data representation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirements of this Compliance Order shall be certified by a responsible officer of Respondent. A responsible officer means a supervisor in charge of a principle agency function or any other person who performs similar policy or decision-making functions for the Lorton Correctional Institute.

The certification of the responsible officer required above shall be in the following form:

I certify that the information contained in or accompanying this [type or submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in

accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

5. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent certified mail, return receipt requested to:

Zelma Maldonado (3EC00)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

and

Mr. Cecil Rodrigues (3RC11)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

2. One copy of all documents submitted to EPA shall be sent by regular mail to:

Jon D. Terry  
RCRA Compliance Manager  
North Virginia Regional Office  
Virginia Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia 22193

6. The term "days" as used herein shall mean calendar days unless specified otherwise.
7. Any violation of this Compliance Order or further violation of Subtitle C of RCRA may subject Respondent to further administrative, civil and/or criminal enforcement action, including the imposition of civil penalties and criminal fines and/or imprisonment, as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

#### **IV. CIVIL PENALTY ASSESSMENT**

The proposed civil penalty has been determined in accordance with Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. part 19 (1997) (which increases the civil penalties which can be assessed by EPA under RCRA for violations occurring on or after January 31, 1997 by 10%). For purposes of determining the amount of any penalty to be assessed, Sections 3008(a) and (g), 42 U.S.C. §§ 6928(a)(3) and (g), requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's October 1990 RCRA "Civil Penalty Policy" ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Exhibit A). This policy provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

EPA proposes the assessment of civil penalties against the Respondent in the following amounts for the following violations.

#### **COUNT 1**

Respondent accumulated hazardous waste at the Facility for more than ninety (90) days and failed to meet the conditions required for generators under VHWMR § 6.05.05(a) (40 C.F.R. § 262.34). The VHWMR requires among other things, that hazardous waste management facilities obtain a storage permit for waste stored on-site for more than 90 days and train facility personnel in the management of hazardous wastes. It is the intent of the RCRA regulations to provide maximum protection of human health and the environment by requiring facilities to store hazardous waste in accordance with the regulations or a VADEQ/EPA issued permit. Drums



containing hazardous waste that are kept at a storage facility for more than ninety (90) days without the management requirements specified in a permit create a potential for the mismanagement of the waste. Additionally, failure to provide appropriate training to personnel that handle hazardous waste, may result in a substantial threat not only to the person handling the waste but to the environment. Untrained employees can cause substantial harm (e.g. provoke spills, mismanage waste etc.). The Facility by storing hazardous waste on-site without a permit or without having interim status, pose a substantial threat because such waste is not stored in a manner which would have provided sufficient safety for human health and the environment. EPA determined, however, that although the drums were kept on-site for a period of approximately 2 years, in this case, the potential for harm as well as the extent of deviation are moderated due to the quantity of waste in question (i.e. two (2) drums) and the number of employees not trained.

Additionally, EPA determined that the violation continued for at least 180 days. The period of non-compliance continued from July 11, 1996 to May 14, 1998. The documented period of operating without a permit exceeds the maximum number of days allowed by the penalty policy. Therefore, the violation was based on 180 days minus 1. The penalty was not increased by 10% pursuant to the Civil Monetary Penalty Inflation Adjustment Rule because the period of the violation took place before January 31, 1997.

**Total Count I Proposed Penalty: \$58,700**

## COUNT 2

A hazardous waste determination was not performed on the content of the ink pit and the drums located throughout the Facility. Respondent's failure to determine whether the wastes it generated were hazardous wastes constitutes a significant harm to the integrity of the RCRA regulatory program and to the environment. It is the fundamental intent of the RCRA regulations to provide protection of human health and the environment by requiring facilities to properly manage their hazardous wastes from cradle-to-grave. This starts with characterization of each solid waste generated. Failure to conduct this characterization may lead to improper management of the waste creating a substantial potential for exposure/harm to workers that handle this waste and could lead to inappropriate disposal endangering human health and the environment. Additionally, the potential for harm to the regulatory program from not performing a hazardous waste determination is highly significant because by not classifying wastes as hazardous, the entire array of RCRA regulations designed to protect human health and the environment may be ignored. It is the regulated community's obligation to perform the hazardous waste determinations. The Respondent's complete failure to perform hazardous waste determinations constitutes a major deviation from the regulatory requirements and a major potential for harm. The penalty was increased by 10% pursuant to the Civil Monetary Penalty Inflation Adjustment Rule because the violation took place after January 31, 1997.

**Total Count II Proposed Penalty: \$27,500**

In accordance with the foregoing, Complainant proposes that Respondent be assessed a total civil penalty in the amount of eighty-six thousand two hundred dollars (\$86,200.00) for the violations alleged in this Complaint:

Count 1	\$ 58,700
Count 2 and 3	\$ 27,500
Total	<u>\$ 86,200</u>

Payment of the penalty shall be made by sending a cashier's check, payable to the Treasurer, United States of America to:

Regional Hearing Clerk  
EPA Region III  
P.O. Box 360515  
Pittsburgh, Pennsylvania 15251-6515

A copy of the check and transmittal letter should be simultaneously transmitted to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing on any material fact contained in this Complaint and Compliance Order, the appropriateness of the assessed civil penalty, and/or the terms of the Compliance Order. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue in the hearing; and (3) whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered admitted.

**If the Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in this Complaint and a**

waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein and ordering compliance with the terms of the Compliance Order without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to regulation 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of these rules is attached.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Mr. Cecil Rodrigues, the attorney assigned to represent EPA in this matter, at:

Office of Regional Counsel (3RC11)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-2683

## **VI. SETTLEMENT CONFERENCE**

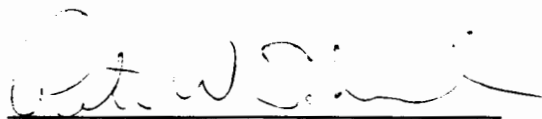
Complainant encourages settlement of the proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Consent Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issue of law, fact, or discretion or the amount of any penalties agreed to in the Consent Agreement.

If you wish to arrange a settlement conference, please contact Mr. Rodrigues, Assistant Regional Counsel, at (215) 814-2683 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or Administrative Law Judge after this Complaint has been issued (40 C.F.R. § 22.08).

Dated: July 31, 1998

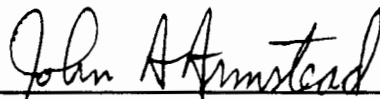


Abraham Ferdas

Director

Hazardous Site Cleanup Division

EPA Region III



John A. Armstead

Director

Waste and Chemicals Management Division

EPA Region III

**CERTIFICATE OF SERVICE**

I certify that the foregoing Complaint, Docket No. RCRA-III-281 was sent to the following persons, in the manner specified, on the date below:

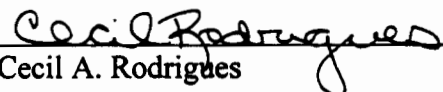
Original hand-delivered

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Copy by certified mail,  
return receipt requested:

Margaret A. Moore, Director  
District of Columbia Department of Corrections  
Suite N-203  
1923 Vermont Avenue, N.W.  
Washington, DC 20001

Dated: July 31, 1998

  
Cecil A. Rodrigues  
Senior Assistant Regional Counsel  
U.S. EPA Region III